



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of : **Confirmation No. 8158**
Domenico FANARA et al. : Attorney Docket No. 2004_1045A
Serial No. 10/501,359 : Group Art Unit 1612
Filed July 15, 2004 : Examiner Lezah Roberts
FORMULATIONS : **Mail Stop: RCE**

REMARKS FILED CONCURRENTLY WITH RCE

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Applicants respectfully submit that the Examiner has engaged in impermissible hindsight in utilizing Johnson to reject the claimed invention as obvious. In particular, Johnson cites at least 350 active agents (from column 6, line 10, to column 7, line 45). Among them, antihistamines are cited as active agents (column 6, lines 41-51), and 27 antihistamines are cited in particular. Johnson fails to describe any examples relating to cetirizine or present experimental data relating to cetirizine. Thus, a person skilled in the art would have no reason to choose cetirizine among the 350 active agents described. Therefore, Johnson is not an applicable

reference because it fails to teach or suggest to a person of skill in the art, without use of hindsight, the claimed invention.

Respectfully submitted,

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